

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

JOEL JOAQUINE BAPTISTA,

Petitioner,

vs.

KEN CLARK, Warden, et al.,

Respondents.

Case No: C 09-2406 SBA (PR)

Related to:  
C 09-4382 SBA (PR)

**ORDER**

Petitioner Joel Joaquine Baptista was convicted in California state court on January 4, 1996, of lewd and lascivious acts on a child under the age of 14 and sexual abuse of a child under the age of 14. He currently is serving his sentence in state prison. Petitioner filed a pro se habeas petition in this Court on May 29, 2009. On August 27, 2009, the Court issued an Order to Show Cause directing Respondents to answer the petition or file a dispositive motion. On December 3, 2009, Respondents filed a motion to dismiss on the ground that the petition is untimely under 28 U.S.C. § 2244(d)(1)(A). Under the Court's scheduling order, Petitioner had sixty days to prepare and file his response to the motion to dismiss. However, to date, Petitioner has not responded to the motion.

In the meantime, on September 17, 2009, Petitioner, through counsel, filed a separate habeas petition challenging his 1996 conviction and sentence. See Baptista v. Clark, C 09-4382 SBA. The case was assigned to the Honorable James Ware. On February 24, 2010, Respondents filed a motion to dismiss the second petition, which appears to make a number of the same arguments presented in their motion filed in the instant action. On May 3, 2010, Petitioner's counsel filed an opposition to the motion to dismiss in C 09-4382 SBA. On June 2, 2010, the Court related the second case to the first. Respondents filed their reply on June 15, 2010.

1 At this juncture, the Court has before it two separate habeas petitions challenging the  
2 same conviction, along with two pending motions to dismiss, both of which are predicated  
3 the question of timeliness. Since Respondent's motion to dismiss in C 09-4382 SBA has  
4 been fully briefed by counsel on both sides, the Court, in its discretion will adjudicate that  
5 motion first. Since the Court's ruling on the motion may impact the disposition of the  
6 motion to dismiss in C 09-2406 SBA, the Court will deny the latter motion without  
7 prejudice to renewal upon the Court's ruling on the fully briefed motion to dismiss.

8 IT IS HEREBY ORDERED THAT:

9 1. Respondents' Motion to Dismiss (Docket 4 in C 09-2406 SBA) is DENIED  
10 without prejudice.

11 2. Within thirty days of the Court's ruling on the motion to dismiss filed in  
12 C 09-4382 SBA, Respondents may either file an answer or renew their motion to dismiss.  
13 Until such time, the instant action shall be held in abeyance.

14 3. This Order terminates Docket 4 in C 09-2406 SBA.

15 IT IS SO ORDERED.

16 Dated: September 1, 2010

  
17 SAUNDRA BROWN ARMSTRONG  
18 United States District Judge  
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2 UNITED STATES DISTRICT COURT  
3 FOR THE  
4 NORTHERN DISTRICT OF CALIFORNIA

5 JOEL JOAQUINE BAPTISTA,

6 Plaintiff,

7 v.

8 KEN CLARK et al,

9 Defendant.  
\_\_\_\_\_/

10 Case Number: CV09-02406 SBA

11 **CERTIFICATE OF SERVICE**  
12

13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
14 Court, Northern District of California.

15 That on September 15, 2010, I SERVED a true and correct copy(ies) of the attached, by placing  
16 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
17 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
18 receptacle located in the Clerk's office.

19 Joel Joaquine Baptista J-91603  
20 Corcoran State Prison  
21 P.O. Box 5248  
22 Corcoran, CA 93212

23 Dated: September 15, 2010

Richard W. Wieking, Clerk

24 By: LISA R CLARK, Deputy Clerk  
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